

**State Court Administrative Office
Trial Court Services
Problem-Solving Courts**

**Michigan Association of Treatment
Court Professionals**



Adult Drug Court Required Best Practices

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Introduction

The use of best practices in drug courts have been shown by empirical research to produce better outcomes than other practices, and their use results in higher-quality programs.

In order for a program to become a certified drug court in Michigan, it must comply with all of the standards and required best practices in the [*Adult Drug Court Standards, Best Practices, and Promising Practices*](#) manual. This document contains all of the required best practices.

Chapter 1: Roles and Responsibilities of the Drug Court Judge

1. GENERAL

- i. Participants ordinarily appear before the same judge throughout their enrollment in the drug court.
- ii. The drug court judge attends current training events on legal and constitutional issues in drug courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. Attendance at annual training conferences and workshops ensures contemporary knowledge about advances in the drug court field.

2. STAFFING MEETINGS AND REVIEW HEARINGS

- i. The judge regularly attends staffing meetings during which the drug court team reviews each participant's progress and discusses potential consequences for performance.
- ii. The judge considers the perspectives of all team members before making final decisions that affect participants' welfare or liberty interests. The judge relies on the expert input of duly trained treatment professionals when imposing treatment-related conditions.
- iii. Participants appear before the judge for status hearings at least once every two weeks during the first phase of the program. The frequency of status review hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs and are regularly engaged in treatment. Status review hearings are scheduled at least once every four weeks until participants are in the last phase of the program.

Chapter 2: Participant Supervision and Compliance

2. FREQUENCY

- i. Participants appear before the judge for status hearings at least once every two weeks during the first phase of the program. The frequency of status review hearings may be reduced gradually after participants have initiated abstinence from alcohol and illicit drugs and are regularly engaged in treatment. Status review hearings are scheduled at least once every four weeks until participants are in the last phase of the program.

4. INCENTIVES & SANCTIONS

- i. The drug court places as much emphasis on incentivizing productive behaviors as it does on reducing crime, substance abuse, and other infractions.
- ii. The drug court has a range of sanctions of varying magnitudes that may be administered in response to program infractions.
- iii. Sanctions are imposed as quickly as possible after noncompliant behavior. Drug courts do not wait for the next review hearing to impose a sanction if the behavior can be addressed more immediately.

5. PHASE PROMOTION AND GRADUATION

- i. Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specific period of time.

6. TERMINATION

- i. Participants are terminated from the drug court if they can no longer be managed safely in the community or if they fail repeatedly to comply with treatment or supervision requirements.

Chapter 3: Confidentiality

1. CONFIDENTIALITY

- i. Drug court planning teams are familiar with relevant federal and state laws and regulations in order to develop appropriate policies and procedures.
- ii. Confidential records are protected after consent expires or is revoked.
- iii. Treatment courts adopt written procedures and/or policies, which regulate and control access to and use of written and electronic confidential records. Written procedures include requests for access to confidential information by the public, attorneys, or any interested party outside the treatment court team.
- iv. Treatment courts establish a memorandum of understanding (MOU) on confidentiality and have all team members and replacement team members sign and agree to follow confidentiality procedures.
- v. Electronic data that is subject to confidentiality standards is protected by security walls and password-protected. Access is limited, and disclosure/re-disclosure is subject to approval by the treatment court judge and team.
- vi. Pre-court staffing meetings may be closed to participants and the public. If open, compliance with consent requirements must be obtained.

Chapter 4: Due Process

3. 1ST AMENDMENT

- i. If it is appropriate and beneficial to order 12-step self-help programs, offenders who object to the deity-based 12-step programs cannot be ordered to attend them. In those instances, secular alternatives must be made available.

6. SANCTIONS AND TERMINATION

- i. By analogy to due process requirements in termination from probation, as supported by several state supreme courts that have ruled on drug court terminations, and in compliance with the probation violation rulings of Gagnon v Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973; and People v Belanger, 227 Mich App 637 (1998), a drug treatment court termination should meet the requirements under MCR 6.445 Probation Revocation.
- ii. A sanction that implicates a liberty interest requires procedural protections under due process. This complies with Michigan law that indicates a jail sentence affects a participant's liberty interest (People v Jackson, 168 Mich App 280 (1988)) and Michigan probation case law, which holds that an ex parte order

that adds a condition of probation that implicates a liberty interest requires, at the least, certain procedural protections under the due process clause (People v Jackson, supra; Vitek v Jones, 445 U.S. 480 (1980)).

iii. By analogy to Michigan probation case law, treatment court termination hearings and sanction hearings involving a ‘liberty interest’ may be summary and informal, MCL 771.4; People v Pillar, 233 Mich App 267 (1998). Therefore, due process would require that, like a probation violation hearing, rudimentary due process rights are provided:¹

- Written copy of charges.
- Appointment of interpreters.
- A hearing equivalent to an arraignment to advise of the allegations.
- An opportunity to admit or deny the allegations.
- Admission (plea) meets the due process requirements for termination from the program as long as the respondent was advised of termination from the program as a consequence.

In the absence of an admission, a hearing with the following procedural rights is required when the hearing involves a liberty interest:

- The moving party has the burden to prove by a preponderance of evidence that one or more allegations in the charging document are true.
- A record of the hearing should be made.
- Like probation revocation, the respondent shall be afforded the opportunity to have an attorney.
- The respondent shall have a right to be heard, present evidence, and cross examine.

¹ For a detailed analyses of due process rights for probationers, see *In Re: Leroy Jackson*, 63 Mich App 241 (1975), *Gagnon v Scarpelli*, 411 US 778 (1973). The respondent would not be entitled like a probationer to the entire realm of due process such as jury trial or proof beyond a reasonable doubt. *Samson v Calif*, 547 US 843 (2006).

Chapter 5: The Drug Court Team

1. TEAM COMPOSITION

- i. A dedicated multidisciplinary team of professionals manages the day-to-day operations of the drug court, including reviewing participant progress during pre-court staff meetings and status hearings, contributing observations and recommendations within the team members' respective areas of expertise, and overseeing the delivery of legal, treatment, and supervision services.**

2. STAFFING MEETINGS AND REVIEW HEARINGS

- i. Team members consistently attend pre-court staff meetings to review participant progress, determine appropriate actions to improve outcomes, and prepare for status hearings in court.**
- ii. Team members attend status hearings on a consistent basis. During the status hearings, team members contribute relevant information or recommendations when requested by the judge or as necessary to improve outcomes or protect participants' legal rights.**

3. COMMUNICATION AND DECISION MAKING

- i. Team members share information as necessary to appraise participants' progress in treatment and compliance with the conditions of drug court. Partner agencies execute memoranda of understanding specifying what information will be shared among team members.**
- ii. Team members contribute relevant insights, observations, and recommendations based on their professional knowledge, training, and experience. The judge should consider all team members' perspectives before making decisions that affect participants' welfare or liberty interests, and should explain the rationale for such decisions to team members and participants.**

Chapter 6: Drug Court Population and Admission

1. SCREENING

- i. Use clinical assessments instead of screening tools to determine diagnoses.

2. ELIGIBLE OFFENSES

- i. The drug court allows charges other than substance use or possession.

3. CLINICAL SUBSTANCE USE AND MENTAL HEALTH ASSESSMENTS

- i. Clinical assessments use validated tools.

4. RISK AND NEED ASSESSMENT

- i. The drug court program accepts participants that are both high risk and high need.
- ii. Use a standardized risk and needs assessment to identify the expected likelihood of a particular outcome (e.g., recidivism) over a specified period of time (e.g., one year) for an individual.

6. ADMISSION FACTORS

- i. Use only objective criteria when determining suitability for drug court.

Chapter 7: Drug and Alcohol Testing

2. RANDOMIZATION

- i. The probability of being tested on weekends and holidays is the same as other days.

3. FREQUENCY AND BREADTH OF TESTING

- i. Urine testing is performed at least twice per week until participants are in the last phase of the program and preparing for graduation.
- ii. Test specimens are examined for all unauthorized substances of abuse that are suspected to be used by drug court participants. Randomly selected specimens are tested periodically for a broader range of substances to detect new substances of abuse that might be emerging in the drug court population.

4. SCIENTIFICALLY VALID DRUG TESTING METHODS

- i. A drug court uses scientifically valid and reliable testing procedures.
- ii. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as GC/MS or LC/MS. Unless a participant admits to using the drug identified by the screening procedure, confirmation of presumptive positive tests should be mandatory.
- iii. Confirmatory tests are not withheld due to the participant's inability to pay.
- iv. Cutoff levels are not interpreted as evidence of new substance use or changes in participants' substance use patterns.
- v. Test specimens are examined routinely for evidence of dilution and adulteration.

5. WITNESSED COLLECTION

- i. Collection of test specimens is witnessed directly by a staff person who has been trained to prevent tampering and substitution of fraudulent specimens.

6. CHAIN OF CUSTODY AND RESULTS

- i. A chain of custody form is completed once a urine sample has been collected. This form ensures the identity and integrity of the sample through transport, testing, and reporting of results.

Chapter 8: Treatment

1. GENERAL & DEFINITION OF DRUG TREATMENT COURTS

- i. A clinically trained treatment representative is a core member of the drug court team and regularly attends team meetings and status hearings.

2. TREATMENT ENTRY

- i. Drug courts link participants to treatment as soon as possible.

4. EVIDENCE-BASED MODELS OF TREATMENT

- i. Treatment providers use evidence-based models and administer treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system.

5. TREATMENT DURATION

- i. Participants receive a sufficient dosage and duration of substance abuse treatment to achieve long-term sobriety and recovery from addiction.

6. MEDICATION-ASSISTED TREATMENT (MAT)

- i. Drug courts allow the use of medication-assisted treatment (MAT) when appropriate, based on a case-specific determination and handle MAT very similarly to other kinds of treatment.
- ii. Only physicians with expertise in addiction psychiatry or addiction medicine may determine the type, dosage, and duration of medication-assisted treatments.

Chapter 9: Education

1. GENERAL

- i. Team members participate in continuing education workshops to gain up-to-date knowledge about best practices on drug court topics.
- ii. New team members complete a formal training or orientation as soon as practical after assuming their position.
- iii. The drug court judge attends current training events on legal and constitutional issues in drug courts, judicial ethics, evidence-based substance abuse and mental health treatment, behavior modification, and community supervision. Attendance at annual training conferences and workshops ensure contemporary knowledge about advances in the drug court field.

Chapter 10: Program Evaluation

2. EVALUATION AND PROGRAM MODIFICATION

- i. Use data to monitor program operations on a consistent basis and make program changes where necessary.